

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	John W. Forsberg; Mark E. Schommer; David P. Olson; William C. Phillips; Alex C. Toy; Charles R. Lewis, Jr.	Confirmation No.	9349
Serial No.:	10/693,005		
Filed:	October 24, 2003	Customer No.:	28863
Examiner:	Christopher A. Flory		
Group Art Unit:	3762		
Docket No.:	1023-294US01		
Title:	MEDICAL DEVICE PROGRAMMER WITH INFRARED COMMUNICATION		

**PETITION UNDER 37 C.F.R. § 1.181(a) TO REQUEST DESIGNATION OF NEW
GROUNDS OF REJECTION IN EXAMINER'S ANSWER**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant petitions the Director under 37 C.F.R. § 1.181(a) to request that several grounds of rejection set forth in the Examiner's Answer dated April 1, 2009 be properly designated as new grounds of rejection.

In the Examiner's Answer, the Examiner asserted that a medical device programmer including software loading port for loading the software into memory upon assembly of the programmer, a housing defining an aperture that provides access to the software loading port, and a plate member placed to cover the loading port, along with the other features recited in Applicant's claims 6–9 were well-known in the art.¹ Additionally, the Examiner presented two example electronic devices to support the assertion that the software loading port and plate member of claims 6–9 were well-known in the art. In particular, the Examiner cited the

¹ Examiner's Answer at pp. 16 and 17.

Samsung SCH-u740 cellular telephone and the Palm Centro as example devices purportedly evidencing the asserted state of the art.²

The Examiner also rejected Applicant's claim 15, which requires an internal antenna defining an aperture and a battery bay extending at least partially into the aperture, as obvious based on the aforementioned Samsung SCH-u740 cellular telephone.³ In addition, the Examiner presented a new rejection of claims 11, 12, 14, and 17 based on the Samsung SCH-u740 cellular telephone. For example, the Examiner asserted that the Samsung SCH-u740 cellular telephone "clearly reads"⁴ on the claim limitations of claim 11, from which claims 12, 14, and 17 depend.

Although presented for the first time in the Examiner's Answer, the Examiner did not designate any of the foregoing reasons for the rejection of claims 6–9, 11, 12, 14, 15, and 17 as new grounds of rejection. Applicant's Reply Brief is submitted herewith as further support of the impropriety of the Examiner's presentation of undesigned new grounds of rejection in the Examiner's Answer.⁵

For at least these reasons, Applicant respectfully requests that the foregoing grounds of rejection of claims 6–9, 11, 12, 14, 15, and 17 presented in the "Response to Argument" section of the Examiner's Answer be designated as new grounds of rejection.

No fee is believed due. Please apply any deficiencies or credits to Deposit Account No. 50-1778.

Date:

By:

June 1, 2009
SHUMAKER & SIEFFERT, P.A.
1625 Radio Drive, Suite 300
Woodbury, Minnesota 55125
Telephone: 651.286.8346
Facsimile: 651.735.1102

Jessica H. Kwak
Name: Jessica H. Kwak
Reg. No.: 58,975

² *Id.* at p. 17.

³ *Id.* at p. 19.

⁴ *Id.* at p. 17.

⁵ *See, e.g.,* Applicant's Reply Brief at pp. 10–12 (discussing claims 6–9), p. 13 (discussing claims 11, 12, 14, and 17), and pp. 13 and 14 (discussing claim 15).